

IN THE WATER COURT OF THE STATE OF MONTANA
UPPER MISSOURI DIVISION
WILLOW CREEK BASIN (41N)
PRELIMINARY DECREE

CLAIMANT: Bow & Arrow Ranch

CASE: 41N-0217-R-2022
41N 44814-00

NOTICE OF FILING OF MASTER'S REPORT

This Master's Report was filed with the Montana Water Court on the above stamped date. Please review this report carefully.

You may file a written objection to this Master's Report within **10 days** of the stamped date if you disagree or find errors with the Master's findings of fact, conclusions of law, or recommendations. Rule 23, W.R.Adj.R. If the Master's Report was mailed to you, the Montana Rules of Civil Procedure allow an additional 3 days be added to the 10-day objection period. Rule 6(d), M.R.Civ.P. If you file an objection, you must serve a copy of the objection to all parties on the service list found at the end of the Master's Report. The original objection and a certificate of mailing to all parties on the service list must be filed with the Water Court.

If you do not file a timely objection, the Water Court will conclude that you agree with the content of this Master's Report.

MASTER'S REPORT

All water right claims that appeared in the Preliminary Decree for Willow Creek (Basin 41N) were subject to "issue remarks" resulting from pre-decree examination by

the DNRC, objections, and counterobjections.

Claim 41N 44814-00 was consolidated into Case 41N-0217-R-2022 to resolve the issue remark.

FINDINGS OF FACT

1. Claim 41N 44814-00 appeared with the following substantive issue remark:

THE CLAIMED SOURCE MAY BE QUESTIONABLE. BASED ON AVAILABLE DATA, THE SOURCE MAY BE SURFACE WATER FROM UNNAMED TRIBUTARY OF TIMBER COULEE.

2. On June 30, 2022, the Court consolidated the above captioned claim into Water Court case 41N-0217-R-2022 and set a filing deadline for the Claimants to respond if they believed that the source name for claim 41N 44814-00, which appears on the abstract as Timber Coulee, should not be modified as listed above. Nothing was filed by the ordered deadline.

3. On October 20, 2022, the Court set a second filing deadline for Claimants to determine if they disagreed with the above-listed modification to the source element for claim 41N 44814-00. Again, nothing was filed by the ordered deadline.

4. Claim 41N 44814-00 received a notice-type issue remark during the DNRC's claim reexamination.

PRINCIPLES OF LAW

1. A properly filed Statement of Claim for an existing water right is prima facie proof of its content. Section 85-2-227, MCA; Rule 10, W.R.Adj.R.

2. Prima facie proof may be contradicted and overcome by a preponderance of the evidence. Rule 19, W.R.Adj.R.

3. A preponderance of the evidence is evidence that shows a fact is "more probable than not." *Hohenlohe v. State*, 2010 MT 203, ¶ 33, 357 Mont. 438, 240 P.3d 628.

4. If prima facie status is overcome, the burden shifts back to the claimant to demonstrate historical use. *79 Ranch v. Pitsch*, 204 Mont. 426, 432-33, 666 P.2d 215, 218 (1983).

5. Section 85-2-248(2), MCA, requires that the Water Court resolve all issue remarks that are not resolved through the objection process. *See also* Rule 7, W.R.Adj.R.

6. The Water Court may use information submitted by the DNRC, the Statement of Claim, and any other data obtained by the Court to evaluate a water right. Sections 85-2-227, -231(2), MCA.

7. When resolving issue remarks, the Water Court must weigh the information resulting in the issue remark and the issue remark against the claimed water right. Section 85-2-247(2), MCA. The factual evidence on which an issue remark is based must meet the preponderance of evidence standard before the prima facie status of a claim is overcome. 43Q 200996-00 et al., Order Establishing Volume and Order Closing Case, at 18, June 8, 2015.

8. If a claimant fails to comply with an order issued by the Water Court, the Court may issue orders of sanction that are just. Rule 22, W.R.Adj.R.

CONCLUSIONS OF LAW

1. The information in the record is sufficient to resolve the above-listed issue remark appearing on claim 41N 44814-00. Because the Claimants did not respond to the filing deadline, the source element should be modified as described in Finding of Fact No. 1. the issue remark should be removed from the claim.

2. The notice-type issue remark appearing on the claim served its notice purpose and should be removed from the claim.

RECOMMENDATIONS

Based on the foregoing Findings of Fact and Conclusions of Law, this Master recommends that the Court adopt the changes as outlined above.

A post decree abstract of the water right claim reflecting the recommended changes is attached to this Report.

ELECTRONICALLY SIGNED AND DATED BELOW.

Service via USPS Mail:

Bow & Arrow Ranch
P.O. Box 126
Sunburst, MT 59482-0126

**POST DECREE
ABSTRACT OF WATER RIGHT CLAIM
WILLOW CREEK
BASIN 41N**

Water Right Number: 41N 44814-00 STATEMENT OF CLAIM

Version: 4 -- POST DECREE

Status: ACTIVE

Owners: BOW & ARROW RANCH
PO BOX 126
SUNBURST, MT 59482 0126

Priority Date: OCTOBER 15, 1909

Type of Historical Right: FILED

Purpose (use): IRRIGATION

Irrigation Type: SPRINKLER

Flow Rate: 1.48 CFS

Volume: 32.00 AC-FT

Climatic Area: 4 - MODERATELY LOW

Maximum Acres: 39.00

Source Name: UNNAMED TRIBUTARY OF TIMBER COULEE

Source Type: SURFACE WATER

Point of Diversion and Means of Diversion:

| <u>ID</u> | <u>Govt Lot</u> | <u>Qtr Sec</u> | <u>Sec</u> | <u>Twp</u> | <u>Rge</u> | <u>County</u> |
|-----------|-----------------|----------------|------------|------------|------------|---------------|
| 1 | | NWNWSE | 6 | 36N | 1E | TOOLE |

Period of Diversion: MAY 1 TO AUGUST 1

Diversion Means: HEADGATE

Reservoir: OFFSTREAM

| <u>Govt Lot</u> | <u>Qtr Sec</u> | <u>Sec</u> | <u>Twp</u> | <u>Rge</u> | <u>County</u> |
|-----------------|----------------|------------|------------|------------|---------------|
| | SWSESE | 1 | 36N | 1W | TOOLE |

Diversion to Reservoir: DIVERSION # 1

Period of Use: MAY 1 TO AUGUST 1

Place of Use:

| <u>ID</u> | <u>Acres</u> | <u>Govt Lot</u> | <u>Qtr Sec</u> | <u>Sec</u> | <u>Twp</u> | <u>Rge</u> | <u>County</u> |
|-----------|--------------|-----------------|----------------|------------|------------|------------|---------------|
| 1 | 22.00 | | NWSW | 7 | 36N | 1E | TOOLE |
| 2 | 10.00 | | NESE | 12 | 36N | 1W | TOOLE |
| 3 | 4.50 | | S2SWNW | 7 | 36N | 1E | TOOLE |
| 4 | 2.50 | | SESENE | 12 | 36N | 1W | TOOLE |

Total: 39.00